

UNITED STATES  
COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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ERNEST VERNER,

*Appellant*

VS.

UNITED STATES OF AMERICA,

*Appellee*

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REPLY  
BRIEF FOR APPELLANT

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APPEAL FROM THE UNITED STATES DISTRICT COURT,  
WESTERN DISTRICT OF WASHINGTON,  
NORTHERN DIVISION.

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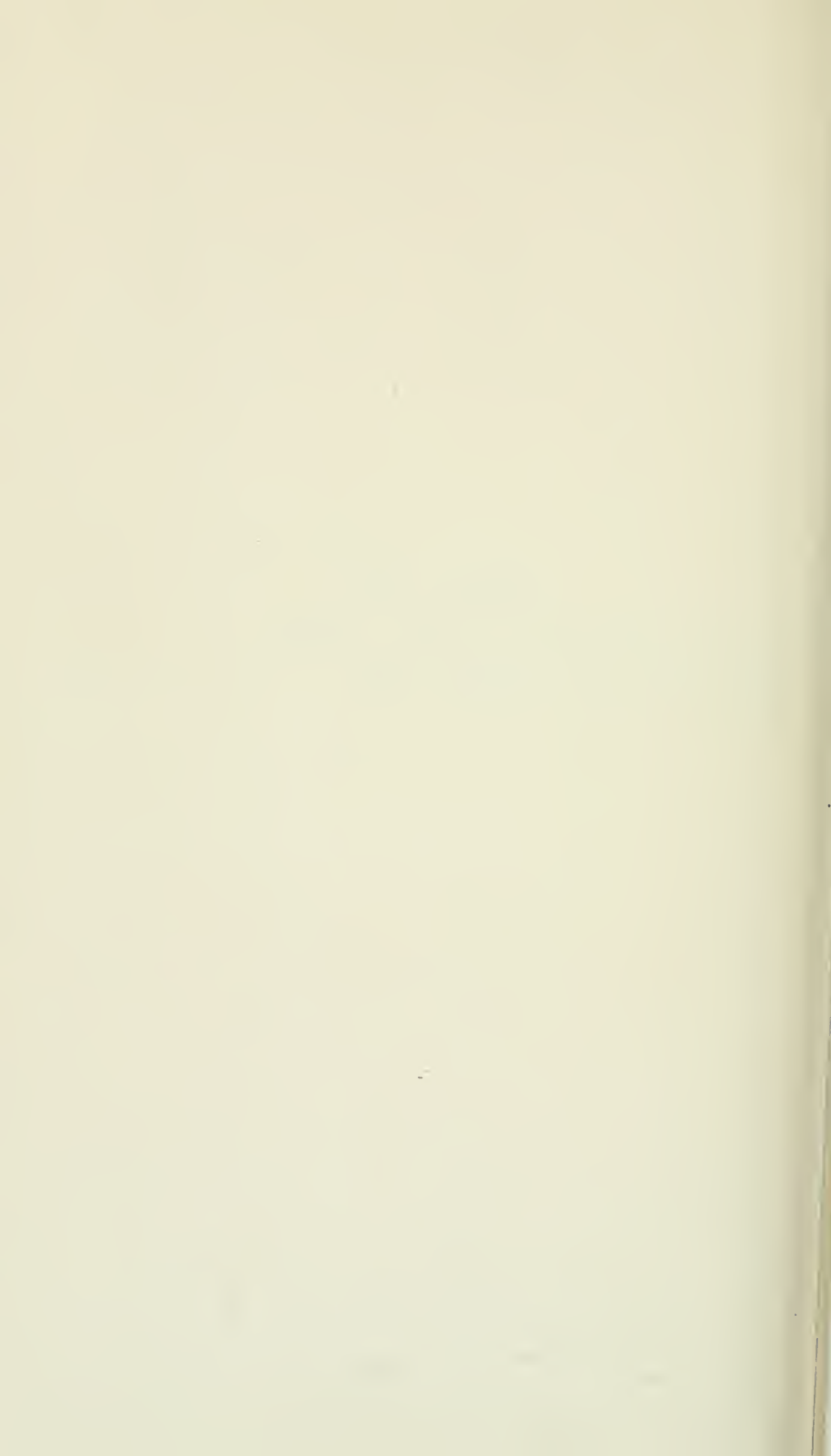
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## CASES CITED

U. S. vs. Jessie Miller Sinclair, (1950)

94 L. Ed. (Adv. Opinions) 256..... 3



## REPLY BRIEF

Appellee bases its case on two assumptions of fact which are not borne out by the record in this case:

1. That the language of the letter was an invitation to the addressee to engage in an immoral act.
2. That the addressees were strangers to the defendant.

FIRST: To support the first contention, that the language of the letter was designed to "Encourage Milton Fardon to indulge in sexual relations with the named woman." as stated on page 5 of appellee's brief, one sentence of the letter is taken out of context. Read in its entirety and considered as an entirety in accordance with the established rules of construction, the letter has just the opposite meaning and effect. It is a warning. It was conceived and designed as an admonition to Milton Fardon to do just the opposite thing: to abstain from such relations.

The woman concerning whom the letter was written had pursued the defendant. As a result his home had been broken for a time. He decided to abandon the illicit enterprise with her and she refused to give him up. She pursued him to his home at various times, followed the defendant and his wife in her car, called on his wife demanding that he be given up to her until (R. p. 212)

"A. On that Sunday in October when we definitely decided to come to an end of it, I told her

once and for all that I would expose her as to just what she was and that was what I tried to accomplish. Everything else had failed, the courts had failed, everything else had failed."

If one were contemplating a dangerous journey and a letter were written to him first outlining the dangers, the experiences of the writer, and then stating "A word to the wise is sufficient and if you see fit to go, be sure and travel fast." The sentence taken out of context would indicate that the writer were encouraging the journey; the entire letter has a positive effect to the opposite end.

SECOND: It is true that the addressees testified that they did not know the defendant, that they were never socially acquainted with him.

The important consideration in this case is that the defendant knew of the addressees, knew who they were and had a very definite and limited purpose in writing the letters. The letters were not written to debauch the minds of two unknown persons, but to definitely expose one certain individual to another man who was then keeping company with her and with the secretary of the individual's employer. This is not a libel suit and no reference to a claim of privilege is made by appellant. This point is made only, in this criminal proceedings, to show the lack of criminal intent and that the words sent through the



mails were not "calculated to corrupt and debauch the mind and morals of those into whose hands it might fall." as stated in the *Swearingen* case relied on by appellant.

THIRD: The Swearingen case is still the recognized law on the subject involved in this appeal.

In *U. S. vs. Jesse Miller Sinclair*, (C.C.A. 3d, 1949), 174 Fed. (2d) 933 the defendant was convicted in the district court, on the charge of sending an obscene, lewd and lascivious letter to his wife through the mails. The circuit court in the above memorandum opinion sustained the conviction. On *Certiorari*, the Supreme Court reversed the decision with the following comment: (94 L. Ed. Adv. Opinions, 256)

"January 9, 1950, *Per Curiam*. The Judgment is reversed. *United States vs. Limehouse*, 285 U. S. 424, 76 L. Ed. 843, 52 S. Ct. 412; *Swearingen vs. United States*, 161 U. S. 442, 40 L. Ed. 765, 16 S. Ct. 562.

Respectfully submitted,

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